

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WINNIE FAYE GRUBBS

PLAINTIFF

V.

NO. 3:95CV87-B-A

PONTOTOC COUNTY HOSPITAL AND NORTH
MISSISSIPPI MEDICAL CENTER, INC.

DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court on the defendants' motion for summary judgment,¹ the plaintiff's cross-motion for partial summary judgment and the plaintiff's motion to amend complaint. The instant motions address the issues of the identity of the corporate parent of defendant Pontotoc Health Services, Inc. [incorrectly named in the complaint as Pontotoc County Hospital] and whether the parent is a proper party defendant.

The plaintiff, a licensed practical nurse, brought this action against Pontotoc Health Services, Inc. [PHS] and North Mississippi Medical Center, Inc. [NMMC] alleging age discrimination. The defendants move for summary judgment on the ground that NMMC was at no time the plaintiff's employer within the purview of the Age Discrimination in Employment Act [ADEA], 29 U.S.C. § 621, et seq. Since North Mississippi Health Services, Inc. [NMHS] is the parent

¹The plaintiff moved for an extension of time until December 4, 1995 for responding to the defendants' motion for summary judgment in order to take certain depositions. The plaintiff filed a response on December 4, 1995. The court retroactively grants the motion for an extension of time and accepts the response and supporting memorandum and exhibits as timely.

corporation and NMMC is a sister corporation of defendant PHS, the plaintiff concedes that partial summary judgment should be entered in favor of NMMC. Contemporaneous with her response to the defendants' motion, the plaintiff filed a motion to amend to correct the name of the defendant hospital and to substitute NMHS for NMMC.² The plaintiff's cross-motion, consolidated with her response to the defendants' motion for summary judgment as to NMMC, seeks partial summary judgment on the issue of whether NMHS was the plaintiff's statutory employer along with PHS. In opposition, PHS contends that NMHS should not be added as a party on the ground that it was not the plaintiff's employer for purposes of ADEA and was not named in the plaintiff's EEOC charge.³

I. EEOC Filing Requirement

PHS contends that the plaintiff failed to exhaust administrative remedies against NMHS and is thus precluded from maintaining an action against NMHS. Like Title VII, the ADEA has

²The United States Magistrate Judge's scheduling order set November 15, 1995 as the deadline for the joining of parties. The plaintiff's motion to amend was not filed until December 4, 1995 along with her response to the defendants' motion and her related cross-motion. PHS, NMMC and NMHS are represented by the same counsel who knew or reasonably should have known that but for a mistake in identity NMHS should have been named as a defendant instead of NMMC. Since the defendants do not object to the proposed amendment on the ground of untimeliness and will not be prejudiced, the court finds that the technical defect should not preclude the motion.

³PHS did not file a separate response to the plaintiff's motion to amend.

a technical filing requirement with the EEOC prior to filing suit.

The United States Supreme Court has held that

filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel and equitable tolling.

Zipes v. Trans World Airlines, 455 U.S. 385, 393, 71 L. Ed. 2d 234, 243 (1982), quoted in Galvan v. Bexar County, 785 F.2d 1298 (5th Cir. 1986). Therefore, the question is whether there are equitable grounds sufficient for excusing the plaintiff's failure to comply with the technical filing requirements in this case. The purpose of the EEOC filing requirement is to provide the opportunity for "cooperation and voluntary compliance as a preferred manner for eliminating [employment] discrimination." White v. North Louisiana Legal Assistance Corp., 468 F. Supp. 1347, 1349 (W.D. La. 1979). The court in White further explained:

In furtherance of this policy, an aggrieved party is required to proceed through the conciliation process of the EEOC prior to bringing a lawsuit....The joining of parties who have not had the opportunity to participate in conciliation procedures circumvents this Congressional mandate.

Id.⁴

⁴This rationale applies to ADEA actions, as well as Title VII actions. See Galvan v. Bexar County, 785 F.2d at 1305 n.11 ("where the source of a section in the ADEA parallels Title VII, the two statutes are to be construed consistently").

The plaintiff in Galvan was excused for failing to designate age discrimination in the EEOC charge⁵ since the defendant received actual notice of the age discrimination claim during the EEOC investigation and had an opportunity to resolve the charge during the conciliation process. 785 F. 2d at 1306-07. It is undisputed that PHS promptly delivered the EEOC charge to NMHS and that NMHS handled the response to the charge. NMHS not only had actual notice of the charge but also fully participated in the EEOC investigation and conciliation efforts. The plaintiff did not retain counsel until after receipt of the right to sue letter from the EEOC and did not know that PHS had forwarded the EEOC charge to NMHS for handling. The plaintiff and counsel first learned of NMHS' involvement in the EEOC investigation after its conclusion. Accordingly, the court finds that equity requires that the plaintiff should not be penalized for not including NMHS in the EEOC charge or amending the EEOC charge to add NMHS, particularly since NMHS not only was apprised of the charge but also assumed responsibility for responding to the age discrimination charge.

⁵The plaintiff marked "other" on the preliminary charge form since age discrimination was not one of the grounds of discrimination listed on the form and the EEOC failed to note on the formal charge the correct type of discrimination. 785 F.2d at 1301.

Accordingly, the plaintiff is excused from her noncompliance with the precise filing requirement of the ADEA.⁶

II. Statutory Employer

Under 29 U.S.C § 630(b), the term "employer" is defined as "a person engaged in an industry affecting commerce who has twenty or more employees for each working day...[or] any agent of such a person." PHS clearly was the plaintiff's immediate employer. The question is whether NMHS was the plaintiff's de facto employer for purposes of liability under the ADEA. The Fifth Circuit has applied the "single, integrated enterprise" test in employment discrimination cases to assess whether a parent corporation, such as NMHS, is an "employer" of a subsidiary's employee. The term "employer" should be liberally construed; however, the court must consider the following factors:

(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.

Garcia v. Elf Atochem North America, 28 F.3d 446, 450 (5th Cir. 1994) (quoting Trevino v. Celanese Corp., 701 F.2d 397, 404 (5th Cir. 1983)). "All four criteria need not be present in all cases." Armbruster v. Quinn, 711 F.2d 1332, 1338 (6th Cir. 1983), cited in,

⁶In addition, the fact that NMHS handled the EEOC charge naming only PHS evidences an identity of interest between the two corporations. See Way v. Mueller Brass Co., 840 F.2d 303, 307 (5th Cir. 1988) ("a party not named in an EEOC charge may not be sued under Title VII unless there is a clear identity of interest between it and the party named in the charge"). See also factors set forth infra on the issue of NMHS' and PHS' interrelationship.

Garcia, 28 F.3d at 450. The most important factor, centralized control of labor relations, involves the following inquiry:

[W]hat entity made the final decisions regarding employment matters related to the person claiming discrimination.

Chaiffetz v. Robertson Research Holding, Ltd., 798 F.2d 731, 735 (5th Cir. 1986).

FINDINGS OF FACT

The following facts are undisputed.

A. Centralized Control of Labor Relations

In July, 1994, the plaintiff was terminated from her position. PHS Administrator, Fred Hood, decided to reduce the work force by laying off those licensed practical nurses, including the plaintiff, who had not received certain advanced training--IV (intravenous) certification training. Hood consulted with Mike Dillard, NMHS Director of Employment Services, and Roger Brown, NMHS Vice-President of Human Resources Department "to advise me or serve as resources for me on whether or not **what I was contemplating** would run afoul of any policies that we had in place" (emphasis added). Dillard and Brown told Hood that his proposal "looked reasonable." The employee handbook sets forth policies regarding hiring, firing, transfers, promotions, evaluations and discipline promulgated by NMHS; NMHS formulated, published and distributed the employee handbooks to PHS and all other

subsidiaries. Upon hiring, the plaintiff signed an acknowledgment form which reads in part:

I acknowledge that I have received a copy of the Employee Handbook and have read and understand the purpose stated above. **I also understand that the handbook and its contents are subject to change as it is deemed necessary and appropriate by NMHS.**

(Emphasis added.) The handbook provides for seniority-based layoffs. PHS deviated from that policy only after seeking NMHS' advice. Unlike NMHS' other subsidiaries, PHS has its own Human Resources Director, Marie Barnes, for geographical reasons. The director is paid by PHS and reports directly to PHS Administrator Hood. However, Hood forwarded the plaintiff's EEOC charge to NMHS' Human Resources Department for handling. Human resources consultation is one of the services NMHS renders to all of its subsidiaries, including PHS, in exchange for a management fee. Documentary evidence in the record reflects that PHS Human Resources Director Barnes consulted with NMHS Human Resources Vice-President Brown on a disciplinary matter pertaining to the plaintiff and that the plaintiff was on at least one occasion referred to Brown. PHS pays its employees from its own bank account but NMHS prescribed the wage and salary opportunities for PHS employees, including shift differential raises about which the plaintiff complained. PHS pays the Social Security contribution and income tax withholding for its employees and controls its employees' paid time off, vacation, holidays and sick time.

B. Interrelation of Operations

PHS and NMHS' other subsidiaries pay NMHS a management fee for corporate human resources services, accounting (including payroll accounting), auditing, education, e.g., IV certification courses for nurse employees⁷, supervisory training, the supply of personnel forms bearing the NMHS name and logo and administration of employee benefits programs. The management fee is 2% of each subsidiary's annual net revenue.

C. Common Management

NMHS' Board of Directors consists of thirty-three board members. PHS has three board members. The Executive Committee of NMHS selects PHS' directors. NMHS and PHS share one common director and officer--Jeff Barber, the President of NMHS and PHS. The remaining two board members of PHS are: Gerald Wages, the Chief Financial Officer of NMHS and PHS' Treasurer, and Eddie Foster, PHS' Secretary.⁸

D. Common Ownership or Financial Control

The factor of common ownership is not addressed by the parties. PHS Administrator Hood testified in his deposition that PHS is a non-profit corporation with no shareholders. With respect to financial control, PHS asserts that it produces its own revenues

⁷NMHS Education Department provided and coordinated the IV certification training, selected the teachers and decided where and when the classes would be offered.

⁸Foster is also NMMC's Chief Operating Officer.

from its patients and their insurers and funds its own operating expenses through separate PHS banking accounts.

CONCLUSIONS OF LAW

Although the record does not warrant concern as to whether PHS could provide satisfactory relief should the plaintiff prevail, nevertheless, the issue of making NMHS a party defendant is thoroughly contested by these parties, as evidenced by the briefs submitted. The plaintiff is entitled to seek recovery from whatever entities fall within the purview of an ADEA employer. Upon due consideration of the multitude of facts established by the parties' exhibits and the applicable case law, the court finds that there is sufficient evidence that NMHS and PHS constitute a single, integrated enterprise. The most significant facts pertain to the issue of centralized control of labor relations: (1) the employee handbook promulgated by NMHS; (2) PHS' consultation with NMHS before reducing its work force; and (3) NMHS' handling of the plaintiff's EEOC charge and participation in the EEOC investigation. PHS contends that it ultimately made the decision to terminate the plaintiff. However, PHS terminated the plaintiff only after obtaining NMHS' advice as to whether its layoff proposal "would run afoul of any policies." In advising that the proposal was reasonable, NMHS in effect exercised its discretion, as set forth in the acknowledgment form signed by the plaintiff, in approving a change in personnel policies or practices. Clearly,

NMHS influenced PHS' decision regarding the plaintiff's termination, as well as other employment matters, through its human resources consultation service and the employee handbook. See Watson v. Gulf and Western Indus., 650 F.2d 990, 993 (9th Cir. 1981) (no "evidence that [the parent] participated in or influenced the employment policies of [its subsidiary]"). The court finds sufficient facts to hold as a matter of law that PHS' operation, management and labor relations are interrelated with NMHS to the extent that NMHS and PHS constitute a single, integrated enterprise. Therefore, the plaintiff's motion for partial summary should be granted on the ground that NMHS, along with PHS, is subject to liability as a statutory employer under the ADEA.

An order will issue accordingly.

THIS, the _____ day of March, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE